

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**SENATE BILL 175
RATIFIED BILL**

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CLARIFICATIONS TO
CHAPTER 53C OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53C-1-4 reads as rewritten:

"§ 53C-1-4. Definitions and application of terms.

Unless the context requires otherwise, the following definitions apply in this Chapter.

...
(4) Bank. – Any corporation, other than a credit union, savings institution, or trust ~~institution, company,~~ that is organized under the laws of this State and is engaged in the business of receiving deposits (other than trust funds), paying monies, and making loans.

...
(20a) Consumer finance licensee. – An individual associated with a "licensee," as that term is defined in G.S. 53-165(h).

(21) Control. – The possession, directly or indirectly, of the power or right to direct or to cause the direction of the management or policies of a person by reason of an agreement, understanding, proxy, or power of attorney or through the ownership of or voting power over ten percent (10%) or more of any class of the voting securities of the person.

...
(44) Lower-tier subsidiary. – Any ~~bank operating subsidiary company~~ in which a ~~bank subsidiary~~ has an equity ownership interest is controlled by a subsidiary.

...
(58) Public member. – A member of the Commission who is not a practical banker or a consumer finance licensee and who is not at the time of appointment to the Commission, nor was within the five years preceding the appointment, an employee of a North Carolina financial institution.

...
(68) Subsidiary. – A company over which a bank has ~~control~~ control, including a lower-tier subsidiary.

....
SECTION 2. G.S. 53C-2-1(d) reads as rewritten:

"(d) A quorum of the Commission shall consist of a majority of its total membership. Subject to the standards of Chapter 138A of the General Statutes, a majority vote of the members qualified with respect to a matter who are present at the meeting where such matter is considered shall constitute valid action of the Commission. In accordance with ~~G.S. 138A-38~~, G.S. 138A-38(a)(6), the State Treasurer and all disqualified members who are present at a meeting shall be counted for purposes of determining whether a quorum is present."

SECTION 3. G.S. 53C-2-2(d) reads as rewritten:

"(d) The Commissioner may sue and prosecute or defend in any action or proceeding in any courts of this State or any other state and in any court of the United States for the enforcement or protection of any right or pursuit of any remedy necessary or proper in connection with the subjects committed to the Commissioner for administration or in connection with any bank or the rights, liabilities, property, or assets thereof under the Commissioner's supervision. Nothing herein shall be construed to render the Commissioner



liable to be sued except as other departments and agencies of the State may be liable under the general law. The Commissioner may exercise any jurisdiction, supervise, regulate, examine, or enforce any banking law and any State consumer protection laws or federal laws with respect to which the Commissioner has enforcement jurisdiction."

SECTION 4. G.S. 53C-4-5(c) reads as rewritten:

- "(c) ~~A director must do either of the following:~~
- ~~(1) Appoint an agent in Wake County, North Carolina, for service of process.~~
 - ~~(2) Consent, on a form satisfactory to the Commissioner, to the following:~~
 - ~~a. The Commissioner may serve as the director's agent for service of process.~~
 - ~~b. The director consents to jurisdiction in Wake County, North Carolina, but only for purposes of any action or proceeding brought by the Commissioner.~~

Following a director's election or appointment as a director, the director shall, solely for purposes of any action or proceeding that may thereafter be brought by the Commissioner, and on a form satisfactory to the Commissioner, do all of the following:

- (1) Consent to the jurisdiction of the Commissioner and the General Court of Justice for the State of North Carolina in any such action or proceeding.
- (2) Consent to venue in Wake County, North Carolina, in any such action or proceeding.
- (3) Unless the director appoints an agent pursuant to subsection (f) of this section, appoint the Commissioner as the director's agent for service of process in any such action or proceeding and authorize and instruct the Commissioner or the Commissioner's duly appointed deputy or agent to accept service of process for the director in any such action or proceeding.

(d) When service of legal process in an action or proceeding brought by the Commissioner is made on a director by service and acceptance of service of process in the manner provided in subdivision (3) of subsection (c) of this section, the Commissioner shall, within three business days thereafter, give notice to the director of such service and acceptance of service of process by depositing a copy of the process served and accepted, together with any pleading, order, or other item accompanying the process, with a "designated delivery service" as defined in 26 U.S.C. § 7502(f)(2) and directed to the director's last known address in the Commissioner's records. The Commissioner shall keep a record which shall show the day and hour of such acceptance of service of process, any pleading, order, or other item accompanying the process, and the date upon which the above notice was given. When service of process is made pursuant to subdivision (3) of subsection (c) of this section, the time within which the director may file a responsive pleading or similar response, as provided by Chapter 1A or Chapter 150B of the General Statutes, shall be extended by 12 days.

(e) The consent and appointment described in subsections (c) and (f) of this section shall be deemed irrevocable and shall not be affected by the termination of the director's service as a director.

(f) In lieu of meeting the requirements of subdivision (3) of subsection (c) of this section, a director may appoint an agent for service of such process in Wake County, North Carolina."

SECTION 5. G.S. 53C-4-11(c) reads as rewritten:

"(c) In establishing the required level of reserve fund, the Commissioner shall include the following types of liquid reserves:

- (1) Cash on hand, which shall include both United States currency and exchange of any clearinghouse association or similar ~~intermediary-intermediary~~, and balances maintained at any federal reserve bank, either directly or on a pass-through basis, to meet federal reserve system reserve requirements.
- (2) Balances payable on demand from designated depository institutions.
- (3) Obligations of the United States Treasury, any agency of the United States government that is guaranteed by the United States government, and any general obligation of this State or any political subdivision thereof that has an investment grade rating of A or higher by a nationally recognized rating service."

SECTION 6. Article 4 of Chapter 53C of the General Statutes is amended by adding a new section to read:

"§ 53C-4-13. Immediate report of changes in directors and certain officers.

Each bank shall report to the Commissioner any changes in its (i) directors, (ii) president, (iii) chief executive officer, (iv) chief financial officer, (v) chief loan officer, or (vi) chief credit officer by the close of the second day on which the bank is open for business following such change."

SECTION 7. G.S. 53C-5-1(d) reads as rewritten:

"(d) Except as provided in subsection (e) of this section, a bank that proposes to engage in any new activity shall apply to the Commissioner for approval to engage in the activity before its commencement. If the new activity will be conducted in a new or existing subsidiary in which the bank intends to make an investment, the bank shall apply to the Commissioner for approval to engage in the new activity before entering into the investment. The bank shall not engage in the new activity or make the investment unless and until the Commissioner issues a written approval of the application. An application for approval shall contain a description of the proposed activity and any other information required by the Commissioner. A copy of any notice or application the bank is required to file with any bank supervisory agency with respect to the proposed activity shall also be provided to the Commissioner. For the purpose of this section, a "new activity" is any business activity in which the bank is not currently engaged. The extension or relocation of an existing activity into a new department, division, or subsidiary of the bank shall not be considered a new activity. A bank may appeal a denial of an application by the Commissioner pursuant to G.S. 53C-2-6."

SECTION 8. G.S. 53C-5-2 reads as rewritten:

"§ 53C-5-2. Investment authority.

...
(c) ~~An investment by a bank or a bank subsidiary pursuant to subsection (b) or (d) of this section shall receive the same accounting and regulatory treatment as is accorded to such investment by the bank's primary federal supervisor. No investment shall be made by a bank or a bank subsidiary pursuant to subsection (b) or (d) of this section unless the following apply:~~

- (1) ~~The investment is approved by the board of directors of the ~~bank~~ bank or a board-authorized committee.~~
- (2) ~~The bank has carefully investigated the business or activity in which the subsidiary established by the investment will engage.~~
- (3) ~~The bank has established the risk management and financial controls necessary to engage in the business or activity in a safe and sound manner.~~
- (4) ~~The bank has, and following the making of the investment and the application of the provisions of this subsection, will continue to satisfy the capital requirements of this Chapter.~~

(d) ~~A bank operating subsidiary may make an investment of any size invest in a lower tier subsidiary.~~ lower-tier subsidiary, subject to the same requirements and limitations applicable to a bank's investment in a subsidiary.

(e) Except as provided in subsection (f) of this section, a bank or ~~bank operating~~ subsidiary proposing to make an investment described in subsection ~~(b), (c), or (d)~~ (b) or (d) of this section shall give prior written notice to the Commissioner, providing such detail as the Commissioner may require. Unless the Commissioner, within 30 days following receipt of the notice, notifies the bank or ~~bank operating~~ subsidiary that the Commissioner objects to the proposed investment, the bank or ~~bank operating~~ subsidiary may complete the investment. However, the Commissioner may extend the period within which to object to the proposed investment if the Commissioner determines that it raises issues that require additional information or additional time for analysis. While the objection period is so extended, the bank or ~~bank operating~~ subsidiary may not proceed with respect to the proposed investment. A bank may appeal an objection by the Commissioner pursuant to G.S. 53C-2-6.

...
(j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent (10%) of ~~its required capital~~ the sum of (i) the bank's "capital," as that term is defined in G.S. 53C-1-4, plus (ii) those portions of the bank's allowance for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325."

SECTION 9. G.S. 53C-6-1(b) reads as rewritten:

"(b) Loans and Extensions of Credit – Limitations:

- (1) The total loans and extensions of credit, both direct and indirect, by a bank to a person, other than a municipal corporation for money borrowed, including in the liabilities of a company the liabilities of the several members of the company, outstanding at one time and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit, shall not exceed the greater of (i) fifteen percent (15%) of the sum of the bank's capital of the bank plus those portions of the bank's allowance for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325 or (ii) the percentage amount permitted for national banks in this State by statute or regulation of the Comptroller of the Currency.
- (2) The total loans and extensions of credit, both direct and indirect, by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan or extension of credit outstanding, shall not exceed the greater of (i) ten percent (10%) of the sum of the bank's capital of the bank plus those portions of the bank's allowance for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325 or (ii) the percentage amount permitted for national banks by statute or regulation of the Comptroller of the Currency. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection.

...."

SECTION 10. G.S. 53C-6-1 is amended by adding a new subsection to read:

"(e) Any bank may, by resolution duly passed at a meeting of its board of directors or a board-authorized committee, request the Commissioner to suspend the limitations on loans set forth in this section as the limitations may apply to any particular loan (i) on the bank's books that then exceeds such limitations, or (ii) which the bank desires to make or modify in a manner that would not otherwise be permitted in the absence of a suspension of such limitations. Upon receipt of a duly certified copy of such resolution, the Commissioner may, in the Commissioner's discretion and subject to such requirements, limitations, and conditions as the Commissioner deems appropriate, suspend the limitations on loans set forth in this section insofar as they apply to the loan in question."

SECTION 11. G.S. 53C-6-6(j) reads as rewritten:

"(j) Any joint account created under the provisions of G.S. 53-146.1 as it existed prior to October 1, 2012, shall for all purposes be governed by the provisions of this section on and after October 1, 2012, and any reference to G.S. 53-146.1 in any ~~statement electing a right of survivorship~~ document concerning the account shall be deemed a reference to this section."

SECTION 12. G.S. 53C-6-7 is amended by adding a new subsection to read:

"(e) Any Payable on Death account created under the provisions of G.S. 53-146.2, as it existed prior to October 1, 2012, shall for all purposes be governed by the provisions of this section on and after October 1, 2012, and any reference to G.S. 53-146.2 in any document concerning the account shall be deemed a reference to this section."

SECTION 13. G.S. 53C-6-8 reads as rewritten:

"§ 53C-6-8. **Personal agency accounts.**

...

(d) The written contract referred to in subsection (a) of this section shall provide that the principal may elect to extend the authority of the agent set out in subsection (a) of this section to act on behalf of the principal in regard to the account, notwithstanding the subsequent incapacity or mental incompetence of the principal. If the principal is a natural person and elects to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the agent may continue to exercise the authority, without the requirement of bond or of accounting to any court, until such time as the agent shall receive actual knowledge that the authority has been terminated. The duly qualified guardian of the estate of the incapacitated or incompetent principal, or the duly appointed attorney-in-fact for the incapacitated or incompetent principal acting pursuant to a durable power of attorney, as

defined in G.S. 32A-8, which grants to the attorney-in-fact the authority in regard to the account that is granted to the agent by the written contract executed pursuant to the provisions of this section, shall have the power, upon notifying the agent and providing written notice to the bank where the personal agency account is established, to terminate the agent's authority to act on behalf of the principal with respect to the account. Upon termination of the agent's authority, the agent shall account to the guardian or attorney-in-fact for all actions of the agent in regard to the account during the incapacity or incompetence of the principal. If the principal is a natural person and does not elect to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the authority of the agent set out in subsection (a) of this section terminates.

...

(g) Any personal agency account created under the provisions of G.S. 53-146.3, as it existed prior to October 1, 2012, shall for all purposes be governed by the provisions of this section on and after October 1, 2012, and any reference to G.S. 53-146.3 in any ~~statement establishing document concerning~~ the account shall be deemed a reference to this section."

SECTION 14. G.S. 53C-7-101 reads as rewritten:

"§ 53C-7-101. Control transactions.

(a) Except as otherwise expressly permitted by this section, a person shall not engage in a control transaction, as defined by G.S. 53C-1-4(22), involving a bank without the prior approval of the Commissioner. A person may contract to engage in a control transaction with the consummation of such control transaction being subject to receipt of the approval of the Commissioner. ~~Each bank shall report to the Commissioner any changes in its directors, president, chief executive officer, chief financial officer, chief loan officer, or chief credit officer by the close of the second day on which the holding company is open for business following such change.~~

...

(c) The following transactions shall not constitute a control transaction requiring the prior approval of the Commissioner:

- (1) The acquisition of control over voting securities in connection with securing, collecting, or satisfying a debt previously contracted for in good faith and not for the purpose of acquiring control of the bank, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing such transaction at least 10 days before the acquiring person first votes or directs the voting of the voting securities.
- (2) The acquisition of control over voting securities by a person who has previously engaged in a control transaction with respect to the bank after receiving the approval of the Commissioner under this Article, which approval permits the acquisition of control over additional voting securities, or any person who is an affiliate of the person previously engaging in the approved control transaction with the permission and who is identified in the application submitted for the approval, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the transaction at least 10 days before the acquiring person or affiliate thereof first votes or directs the voting of the voting securities.
- (3) An acquisition of control over voting securities by operation of law, will, or intestate succession, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the acquisition or transfer at least 10 days before the acquiring person first votes or directs the voting of the voting securities.
- (4) Bona fide gifts.
- (5) A transaction exempted by rules, orders, or declaratory rulings of the Commissioner issued because approval of such a transaction is not necessary to achieve the objectives of this Chapter.
- (5a) An acquisition of control over voting shares exempt from the prior approval requirements set forth in section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842), pursuant to the exceptions described in items (A), (B), or (C) of subsection (a) of that section.

- (6) An acquisition of control over voting securities in a transaction subject to approval under section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842).

...."

SECTION 15. G.S. 53C-7-102(c) reads as rewritten:

"(c) Notwithstanding any laws to the contrary, information about the character, competence, or experience of an acquiring person or its proposed management personnel or affiliates shall be deemed a record of the Commissioner and subject to ~~G.S. 53C-2-8.~~G.S. 53C-2-7(b)."

SECTION 16. G.S. 53C-7-205 reads as rewritten:

"§ 53C-7-205. ~~Fiduciary powers and liabilities of North Carolina financial institutions combining in a combination or a transferring of assets and liabilities.~~

Whenever any ~~North Carolina financial~~depository institution or ~~federally chartered~~any trust institution ~~doing business in this State~~ shall combine with or shall sell to and transfer its assets and liabilities to any other ~~bank, depository institution,~~ trust institution, ~~savings institution,~~ or other company, as provided by the laws of this State or the United States, all the then existing fiduciary rights, powers, duties, and liabilities of the combining or transferring institution, including the rights, powers, duties, and liabilities as executor, administrator, guardian, trustee, and/or any other fiduciary capacity, whether under appointment by order of court, will, deed, or other instrument, shall, upon the effective date of the combination or sale and transfer, vest in, devolve upon, and thereafter be performed by the surviving or transferee company, and such latter institution shall be deemed substituted for and shall have all the rights and powers of the transferring institution."

SECTION 17. G.S. 53C-7-207 reads as rewritten:

"§ 53C-7-207. **Combination with a subsidiary.**

(a) ~~With the approval of the Commissioner, a bank may do any one the following:~~Except as provided in subsection (c) of this section, a bank proposing to do any of the following combinations shall give prior written notice to the Commissioner that provides such detail of the proposed combination that the Commissioner may require:

- (1) Combine with a subsidiary, ~~so long as~~if the bank is the resulting entity of the combination.
- (2) Combine a subsidiary with another company, if a subsidiary is the resulting entity.
- (3) Combine two or more subsidiaries of two or more banks under common control of the same holding company.

~~The approval of the Commissioner is not required for a combination of a subsidiary and another company when a subsidiary is not the resulting entity, which shall be effected in accordance with organizational law applicable to each, or for a combination of two or more subsidiaries of the same bank. Unless the Commissioner, within 30 days of receiving the notice, notifies the bank or subsidiary that the Commissioner objects to the proposed combination, the bank or subsidiary may complete the combination. However, the Commissioner may extend the period to object to the proposed combination if the Commissioner determines that it raises issues that require additional information or additional time for analysis. While the objection period is so extended, the bank or subsidiary may not proceed with respect to the proposed combination.~~

(b) ~~The bank seeking approval of the combination shall file with the Commissioner an application for approval and such additional information as the Commissioner shall require by rule or as is required by the Commissioner in connection with the application in order to achieve the objectives of this Chapter. The bank shall pay to the Commissioner a fee as set forth by rule. A bank may, pursuant to G.S. 53C-2-6, appeal an objection by the Commissioner.~~

(c) ~~The Commissioner shall examine the proposed combination to determine whether the customers and communities served by the bank would be adversely affected by the combination, the combination would cause the bank to not be solvent, have inadequate capital, or not be in compliance with this Chapter or the rules of the Commissioner, or the combination would present other risks to the safe and sound operation of the bank deemed unacceptable by the Commissioner. The prior written notice requirement of subsection (a) of this section is not required for (i) a combination of a subsidiary and another company when the subsidiary is not the resulting entity, (ii) a combination of two or more subsidiaries of the same bank, each of~~

which shall be effected in accordance with applicable organizational law, or (iii) if all of the following apply:

- (1) The bank is well-capitalized and well-managed as demonstrated by the supervisory rating it received during its most recent examination.
- (2) The subsidiary with which the combination is to be made engages in either of the following activities:
 - a. One in which the bank is then engaged or has previously been engaged, directly or through a different subsidiary, and for which all necessary approvals of bank supervisory agencies and of the Commissioner have previously been obtained and remain in effect.
 - b. One for which no prior notice or application for approval to any federal bank supervisory authority is required.
- (3) The bank notifies the Commissioner in writing of the combination within 30 days thereafter."

SECTION 18. G.S. 53C-7-208 is repealed.

SECTION 19. G.S. 53C-9-403 reads as rewritten:

"§ 53C-9-403. Authority to serve as trustee terminated.

Whenever any bank that has been, or shall be, appointed trustee in any indenture, deed of trust, or other instrument of like character, executed to secure the payment of any bonds, notes, or other evidences of indebtedness, has been or shall be placed in receivership, a new trustee shall be appointed in the manner provided in G.S. 36C-7-704 or other applicable law, and the powers and duties of the bank as trustee in any such instrument shall, upon the entry of an order of the clerk of superior court having jurisdiction under G.S. 53C-9-405 appointing a successor trustee, upon a petition as described in this Part, shall immediately cease."

SECTION 20. G.S. 53C-10-102(c) reads as rewritten:

"(c) The following transactions shall not constitute a control transaction under this section requiring the prior approval of the Commissioner:

- (1) The acquisition of control over voting securities by a person who has previously engaged in a control transaction with respect to the holding company after receiving the approval of the Commissioner under this Article, which approval permits the acquisition of control over additional voting securities, or any person who is an affiliate of the person previously engaging in the approved control transaction with such permission and who is identified in the application submitted for the approval, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the transaction at least 10 days before the acquiring person or affiliate thereof first votes or directs the voting of the voting securities.
- (2) An acquisition of control over voting securities by operation of law, will, or intestate succession, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the acquisition or transfer at least 10 days before the acquiring person first votes or directs the voting of the voting securities.
- (3) Bona fide gifts.
- (4) A transaction exempted by rules, orders, or declaratory rulings of the Commissioner, issued because approval of the transaction is not necessary to achieve the objectives of this Chapter.
- (5) An acquisition of control over voting shares exempt from the prior approval requirements set forth in section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842), pursuant to the exceptions described in items (A), (B), or (C) of subsection (a) of that section.
- (6) An acquisition of control over voting securities in a transaction subject to approval under section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842)."

SECTION 21. G.S. 53C-10-301 reads as rewritten:

"§ 53C-10-301. Cease and desist order.

Upon a finding that any action of a holding company subject to registration under this ArticleArticle, or its nonbank affiliate, may be in violation of any banking laws, the Commissioner, after a reasonable notice to the holding company and an opportunity for it to be

heard, shall have the authority to order it to cease and desist from such action. If the holding company fails to appeal the decision within 10 days of the date of the issuance of the order in accordance with G.S. 53C-2-6, and continues to engage in the action in violation of the Commissioner's order to cease and desist such action, it shall be subject to a civil money penalty of twenty thousand dollars (\$20,000) for each day it remains in violation of the order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a holding company's failure to comply with an order of the Commissioner. The clear proceeds of the civil money penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 22. G.S. 53-366(a) reads as rewritten:

"(a) Except as otherwise provided in this Article, the following provisions of ~~this Chapter~~ this Chapter and Chapter 53C of the General Statutes shall apply to authorized trust institutions:

- (1), (2) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.
- (3) G.S. 53C-7-205.
- (4) through (6) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.
- (7) Article 8 of Chapter 53C of the General Statutes, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article shall apply in lieu of:
 - a. G.S. 53C-8-2.
 - b. G.S. 53C-8-3.
 - c. G.S. 53C-8-17.
- (8), (9) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.
- (10) Article 14 of this Chapter.
- (11) G.S. 53C-2-7(b)."

SECTION 23. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of April, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____, m. this _____ day of _____, 2013